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FILED

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ACUPUNCTURE BOARD

**BEFORE THE
ACUPUNCTURE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 1A-2010-49

TINA THOA LUU, aka Tina Luu Pham,

OAH No.

2445 Glen Fox Court
San Jose, CA 95148

ACCUSATION

Acupuncture License No. AC 6799,
Respondent.

Complainant alleges:

PARTIES

1. Janelle Wedge ("Complainant") brings this Accusation solely in her official capacity as the Executive Officer of the Acupuncture Board, Department of Consumer Affairs.

2. On or about July 20, 1999, the Acupuncture Board issued Acupuncture License Number AC 6799 to Tina Thoa Luu, also known as Tina Luu Pham ("Respondent"). The Acupuncture License is presently valid and will expire on May 31, 2011, unless renewed.

JURISDICTION

3. This Accusation is brought before the Acupuncture Board ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

1 4. Section 4955 of the Code states:

2 "The board may deny, suspend, or revoke, or impose probationary conditions upon the
3 license of any acupuncturist if he or she is guilty of unprofessional conduct.

4 "Unprofessional conduct shall include, but not be limited to, the following:

5 ...

6 "(b) Conviction of a crime substantially related to the qualifications, functions,
7 or duties of an acupuncturist, the record of conviction being conclusive evidence
8 thereof."

9 5. Section 4955.1 of the Code states:

10 "The board may deny, suspend, revoke, or impose probationary conditions upon the license
11 of any acupuncturist if he or she is guilty of committing a fraudulent act including, but not be
12 limited to, any of the following:

13 ...

14 "(c) Committing any act involving dishonesty or corruption with respect to the
15 qualifications, functions, or duties of an acupuncturist."

16 6. Section 4956 of the Code states:

17 AA plea or verdict of guilty or a conviction following a plea of nolo contendere made to a
18 charge which is substantially related to the qualifications, functions, or duties of an acupuncturist
19 is deemed to be a conviction within the meaning of this chapter.

20 AThe board may order a license suspended or revoked, or may deny a license, or may
21 impose probationary conditions upon a license, when the time for appeal has elapsed, or the
22 judgment of conviction has been affirmed on appeal, or when an order granting probation is made
23 suspending the imposition of sentence irrespective of a subsequent order under the provisions of
24 Section 1203.4 of the Penal Code allowing the person to withdraw his or her pleas of guilty and to
25 enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation,
26 complaint, information, or indictment.@

27 7. Section 118, subdivision (b), of the Code provides that the suspension, expiration,
28 surrender or cancellation of a license shall not deprive the Board of jurisdiction to proceed with a

1 disciplinary action during the period within which the license may be renewed, restored, reissued
2 or reinstated.

3 COST RECOVERY

4 8. Section 4959 of the Code states:

5 "(a) The board may request the administrative law judge, under his or her
6 proposed decision in resolution of a disciplinary proceeding before the board, to
7 direct any licensee found guilty of unprofessional conduct to pay to the board a sum
8 not to exceed actual and reasonable costs of the investigation and prosecution of the
9 case.

10 "(b) The costs to be assessed shall be fixed by the administrative law judge and
11 shall not in any event be increased by the board. When the board does not adopt a
12 proposed decision and remands the case to an administrative law judge, the
13 administrative law judge shall not increase the amount of any costs assessed in the
14 proposed decision.

15 "(c) When the payment directed in the board's order for payment of costs is not
16 made by the licensee, the board may enforce the order for payment in the superior
17 court in the county where the administrative hearing was held. This right of
18 enforcement shall be in addition to any other rights the board may have as to any
19 licensee directed to pay costs.

20 "(d) In any judicial action for the recovery of costs, proof of the board's
21 decision shall be conclusive proof of the validity of the order of payment and the
22 terms for payment."

23 "(e) All costs recovered under this section shall be considered a reimbursement
24 for costs incurred and shall be deposited in the Acupuncture Fund."

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1 FIRST CAUSE FOR DISCIPLINE

2 (Substantially-related Convictions)

3 9. Respondent is subject to disciplinary action under code sections 4955(b) and 4956
4 [substantially related conviction] in that she has two theft related convictions. The circumstances
5 are as follows:

6 2010 conviction

7 10. On or about March 4, 2010, a criminal complaint titled *People of the State of*
8 *California vs. Tina Luu Pham* was filed in Santa Clara County Superior Court , case number
9 C1071069. Count 1 charged Respondent with a misdemeanor violation of Penal Code section
10 666 (petty theft with specified prior-served term in a penal institution), in that she unlawfully
11 stole, took and carried away merchandise valued at \$114.52 from WalMart and had incurred a
12 prior misdemeanor petty theft conviction.

13 11. On or about May 24, 2010, Respondent entered a plea of nolo contendere to the
14 misdemeanor violation of Penal Code section 666. She was sentenced to two years probation and
15 ordered to serve 30 days in jail and pay fines.

16 2008 conviction

17 12. On or about August 27, 2007, a criminal complaint titled *People of the State of*
18 *California vs. Tina Luu Pham* was filed in Santa Clara County Superior Court , case number
19 CC777773. Count 1 charged Respondent with a misdemeanor violation of Penal Code section
20 484-487(a) (grand theft of personal property valued over \$400.00) in that she unlawfully took
21 merchandise exceeding \$400.00 from Macy's Department Store. Count 2 charged Respondent
22 with a misdemeanor violation of Penal Code section 459-460(b) (second degree burglary),
23 entering with intent to commit theft from Macys Department Store.

24 13. On or about February 11, 2010, Respondent entered a plea of nolo contendere to the
25 misdemeanor violation of Penal Code section 484-487(a), grand theft of property valued over
26 \$400.00; the second count was dismissed. She was sentenced to two years probation and ordered
27 to serve 30 days in jail and pay fines.

28 ///

1 14. Therefore, Respondent's license is subject to discipline in that she has two theft
2 convictions which are substantially related to the qualifications, functions and duties of an
3 acupuncturist.

4 SECOND CAUSE FOR DISCIPLINE

5 (Dishonest Acts)

6 15. Paragraphs 10 through 13 are incorporated herein by reference as if set out in full.

7 16. Respondent is subject to disciplinary action under code section 4955.1(c) in that her
8 two misdemeanor theft convictions constitute acts involving dishonesty or corruption with respect
9 to the qualifications, functions, or duties of an acupuncturist.

10 PRAYER

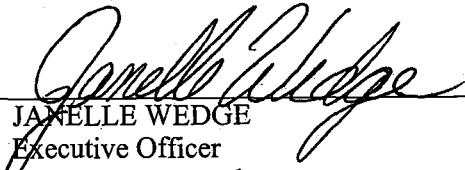
11 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
12 and that following the hearing, the Acupuncture Board issue a decision:

13 1. Revoking or suspending Acupuncture License Number AC 6799, issued to Tina Thoa
14 Luu, also known as Tina Luu Pham;

15 2. Ordering Tina Thoa Luu to pay the Acupuncture Board the reasonable costs of the
16 investigation and enforcement of this case, pursuant to Business and Professions Code section
17 4959; and

18 3. Taking such other and further action as deemed necessary and proper.

19
20 DATED: DEC 21 2010

21 
22 JANELLE WEDGE
23 Executive Officer
24 Acupuncture Board
25 Department of Consumer Affairs
26 State of California
27 Complainant
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